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Supreme Court, U.S.
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No. 97-0670

In The

Supreme Court of the United States

October Term, 1997

MARTIN J. BELLOWS, Individually and on Behalf of Phillips Industrial Constructors, Inc.,

Petitioner,

vs.

AMOCO OIL COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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RULE 29.6 STATEMENT

The parent company of Amoco Oil Company is Amoco Company. The parent company of Amoco Company is Amoco Corporation. The nonwholly-owned subsidiaries of Amoco Oil Company are as follows:

Amoco Mexico Holding Company S.A. de C.V.
Amoco Chemical de Mexico, S.A. de C.V.
Amoco Fabrics & Fibers de Mexico, S.A. de C.V.
Amoco Fabrics & Fibers Servicios S.A. de C.V.
Amoco Fabrics & Fibers Servicios Administrativos, S.A. de C.V.
Amoco Oil De Mexico, S.A. de C.V.
Amoco Servicios Mexicanos, S.A. de C.V.
Empresas Amoxxo, S.A. de C.V.
Inmobilaria Sitios Verdes
Amoco Sulfur Recovery Company
Huaneng Amoco Clean Energy Company
Renaissance Center Partnership

LIST OF INTERESTED PARTIES

Jerry Jordan, Sherman McNown, Dewey Bailey and Larry Blow, defendants below, are no longer parties to this action. Texas City Refinery was never a defendant below and has no interest in this action.

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42 U.S.C. § 1981 ..... 1, 2, 3, 5, 6, 8

42 U.S.C. § 1985(3) 1, 2

STATEMENT OF THE CASE

I. Nature Of The Case

Phillips Industrial Constructors, Inc. ("PICI") was a general maintenance contractor at Amoco Oil Company's ("Amoco") Texas City Refinery ("Refinery"). Martin Bellow was, at all times, the 51% owner and president of PICI.

This civil rights action arose out of Amoco's decision to reduce the number of general maintenance contractors working in the Refinery. As part of this process, Amoco decided to use a single, primary contractor to perform most of the general maintenance work that Amoco's own personnel could not perform. As a result of Amoco's use of a primary general maintenance contractor, by 1990 PICI and all other general maintenance contractors experienced a dramatic decline in the volume of their general maintenance work. PICI's annual gross revenues from Amoco work dropped from approximately $3.5 million in 1990 to $209,537 in 1994.

II. Course Of Proceedings And Disposition

Bellow filed his lawsuit "individually and on behalf of" PICI on September 7, 1994. Originally, Bellow asserted claims against Amoco and one of its employees, Jerry Jordan, under 42 U.S.C. §§ 1981 and 1985(3), as well as under Texas law for tortious interference with the right to contract and the intentional infliction of emotional distress. On January 11, 1995, Bellow and PICI filed an amended complaint adding PICI as a separate plaintiff and adding other Amoco employees as defendants.

The district court held trial before a jury on September 18 through 25, 1995. Before submitting the case to the jury, and with no opposition from plaintiffs, the district court dismissed

plaintiffs' § 1981 claims against the individual defendants, and their § 1985(3) claims and state law claims against all defendants.[1] The district court only submitted to the jury plaintiffs' § 1981 claims against Amoco. The jury answered "No" to the question,

> Do you find from a preponderance of the evidence that Amoco Oil Company discriminated against Phillips Industrial Constructors, Inc. because of its race in terminating, modifying, or refusing to contract with it?

Record on Appeal, p. 705 (R. 705). The jury did find that Amoco discriminated against Bellow in changing, modifying or terminating his right to contract with PICI. The jury awarded Bellow $50,000 for "subjective damages" and $225,000 in punitive damages.

The questions presented before the United States Court of Appeals for the Fifth Circuit, were: (i) whether Bellow had a contract with PICI; (ii) even if a contract existed, whether the evidence established that Amoco terminated, modified or changed that contract; and (iii) whether evidence supported the jury's conclusion that Amoco intentionally discriminated against Bellow on the basis of his race. Amoco also presented the question of whether the evidence supported the jury's award of $50,000 in "subjective damages" and $225,000 in punitive damages.

The Fifth Circuit unanimously reversed the district trial court's judgment in favor of Bellow and entered judgment in

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1. Among the claims dismissed was Bellow's tortious interference with the right to contract claim, which involved essentially the same theory as Bellow's individual § 1981 claim, *i.e.*, that Amoco interfered with, terminated, modified or changed his alleged contract with PICI.

favor of Amoco.[2] The Fifth Circuit reviewed the record in detail and concluded that the evidence did not support the jury's verdict in favor of Bellow.

The Fifth Circuit began its decision by making two assumptions in Bellow's favor. First, although declining to rule on the issue of whether all third-party claims are actionable under § 1981, the Fifth Circuit assumed that Bellow had an actionable § 1981 claim against Amoco. Second, although finding the record devoid of any evidence of a contract between Bellow and PICI, the Fifth Circuit assumed that Bellow had some type of implied contract with PICI. Despite these assumptions, the Fifth Circuit concluded that there was no evidence that any Amoco action changed, modified, altered, terminated, or otherwise affected Bellow's relationship with PICI. The Fifth Circuit also concluded that no Amoco action toward PICI or Bellow was motivated by race, as reflected in the jury's verdict in favor of Amoco on PICI's § 1981 claim. (R. 705).

Bellow did not seek rehearing *en banc* by the Fifth Circuit.

III. Statement Of Facts

Bellow, an African-American, and Harold Phillips, a Caucasian, worked throughout the 1970s in the construction industry, primarily in Texas City, Texas and the surrounding Gulf Coast area. During the 1970s, the two men worked together for various construction firms and thereby became acquainted with each other.

In 1978, Phillips formed his own construction company, PICI. In 1979, in order to obtain maintenance and construction

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2. Bellow did not cross-appeal the judgment in favor of Amoco on PICI's § 1981 claim.

work from Amoco as a minority-owned company, Phillips offered Bellow a 51% ownership interest in PICI. Bellow accepted the offer and also became president of PICI while Phillips became PICI's vice-president owning 49% of the company.

After the creation of the partnership, and throughout the 1980s, PICI's business relationship with Amoco flourished. Over those years, Amoco contracted with PICI for maintenance services and paid it several millions of dollars for those services. During this time, PICI derived almost all of its work and revenue from Amoco.

After reevaluating its use of contractors at the Refinery, Amoco decided by 1989 or 1990 to use a single, primary contractor to perform most of the general maintenance work that Amoco's own personnel could not perform. Under Amoco's new policy, general maintenance work was first assigned to its own personnel. If Amoco personnel were unavailable, Amoco assigned the work to Brown & Root Industrial Services ("BRIS"). Only if BRIS could not perform the work did Amoco contract the job to another maintenance contractor such as PICI. Bellow conceded at trial that racial animus did not motivate Amoco's decision to use a single, primary general maintenance contractor.

As a result of Amoco's new contractor policy, PICI and all other general maintenance contractors, including "white-owned" contractors, experienced a dramatic decline in their general maintenance work. Bellow misrepresents this fact in his Petition. He states that a contractor, Trey Industries, received more work from Amoco at this time. The undisputed record evidence established that the contractors that continued to work in the Refinery were those that changed their business by developing an area of expertise outside of general maintenance work. The

overall level of business for those contractors may have actually increased, but their amount of general maintenance work did decrease. PICI never attempted to increase its level of services beyond general maintenance work.

REASONS FOR DENYING THE WRIT

I.

THE PETITION HAS NOT IDENTIFIED AN IMPORTANT QUESTION OF FEDERAL LAW THAT MUST BE ADDRESSED BY THIS COURT.

In reaching its decision below, the Fifth Circuit neither decided an important question of federal law that should be addressed by this Court nor decided an important question of federal law that conflicts with the decisions of this Court. Thus, Supreme Court review is unnecessary.

Bellow argues that Supreme Court guidance is necessary on the issue of whether an individual has a cause of action under § 1981 against a third party for interference with that individual's right to make and enforce contracts. Bellow asks this Court to broadly interpret the Fifth Circuit's decision in *Faraca v. Clements*, 506 F.2d 956 (5th Cir. 1975) and hold that all third-party interference claims are actionable under § 1981.

Although the Fifth Circuit did partially discuss the issue of third-party interference and "express[ed] some doubt as to whether Bellow has . . . presented a cognizable claim," Petition, p. 13a, it declined to resolve the issue and assumed that Bellow could state a cognizable § 1981 claim. It dismissed Bellow's claim because he failed to prove that racial motivation affected any of the contractual rights enumerated by § 1981. Thus, Bellow is merely challenging Fifth Circuit dictum that did not adversely

affect him. Furthermore, on this issue, the Fifth Circuit's opinion does not present a complete, thoughtful decision ripe for this Court's review. Because the issue of third-party liability under § 1981 has not been fully addressed by the other circuits, it deserves further consideration by the appellate courts.[3]

II.

NO CONFLICT BETWEEN CIRCUITS EXISTS.

Bellow fails to identify any United States Court of Appeals decision that conflicts with the Fifth Circuit's opinion. To the best of Respondent's knowledge, there is no case in conflict with the decision of the Fifth Circuit.

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3. The few court decisions addressing the issue have been unique, fact-specific decisions. In these decisions, the courts reviewed a unique factual record and determined that the alleged third parties either were significantly related to the employer or intentionally acted to infringe the plaintiffs' § 1981 rights. For these reasons, the decisions are factually distinguishable from the case at bar. *See Al-Khazraji v. Saint Francis College*, 784 F.2d 505, 518 (3rd Cir. 1986) (individuals may be liable under § 1981 where they "authorized, directed, or participated in the alleged discriminatory conduct"); *Daniels v. Pipefitter's Assn Local Union No. 597*, 945 F.2d 906, 915 (7th Cir. 1991) (labor union was not an unrelated third-party but a "necessary intermediary and conduit connecting job opportunities to job referrals"); *Morrison v. Board of Psychiatry*, 908 F. Supp. 582 (N.D. Ill. 1996) (psychiatric board's denial of certification interferes with plaintiff's ability to be employed by individual patients and by medial facilities); *Nieto v. United Auto Workers Local 598*, 672 F. Supp. 987 (E.D. Mich. 1987) (supervisor may state a cause of action against subordinate employees and their union). Furthermore, none of the cases Bellow presents involves a jury verdict finding that the third party did not discriminate against the corporate entity which brought the same § 1981 claim as, and derived its racial identify from, its majority owner.

III.

THE QUESTIONS PRESENTED REQUIRE A REVIEW OF THE APPELLATE COURT'S FACT-SPECIFIC DECISION BASED ON A SUFFICIENCY OF EVIDENCE STANDARD OF REVIEW.

Contrary to Bellow's assertions, the Fifth Circuit has both properly stated the applicable rules of law and properly applied those rules to the record evidence. This case did not turn on any legal issue. Instead, it was based on a sufficiency of the evidence standard after the Fifth Circuit assumed various factual and legal issues in Bellow's favor. Sufficiency of evidence cases are not reviewed by this Court.

IV.

THE QUESTIONS PRESENTED TO THIS COURT FOR REVIEW MISREPRESENT THE APPELLATE COURT'S DECISION.

Bellow argues that Supreme Court review is necessary "to correct the appellate court's indication that Bellow does not have an employment contract." Petition, p. 10. Bellow is mistaken. The Fifth Circuit expressly stated that, whether or not Bellow had an employment contract with PICI, Bellow still could not prevail because the evidence failed to establish that Amoco interfered with that contract. Petition, p. 17a. Moreover, as Bellow himself acknowledges, the Fifth Circuit assumed, in his favor, that some contract between Bellow and PICI did exist. Petition, pp. 3-4, 13. Thus, even if the Supreme Court did determine that Bellow had a contract with PICI, such a determination would not affect the Fifth Circuit's ultimate ruling that Amoco did not terminate, modify or change Bellow's contractual rights because of his race.

Similarly, Bellow is mistaken in his argument that the Supreme Court must review the Fifth Circuit's decision to decline ruling on whether a third party can interfere with a contract and thereby violate § 1981. Again, the Fifth Circuit assumed, in Bellow's favor, that his claim fell within the ambit of § 1981, but rejected Bellow's claim based on the insufficiency of the evidence. Specifically, the Fifth Circuit held that Bellow failed to satisfy his § 1981 burden of proving that Amoco's actions impacted his contractual rights protected by § 1981 and were motivated by his race. It makes no sense for the Supreme Court to review an issue assumed in Bellow's favor and upon which the Fifth Circuit's decision did not turn.

V.

THE PETITION ERRONEOUSLY DOWNPLAYS THE SIGNIFICANCE OF THE JURY'S FINDING THAT AMOCO DID NOT DISCRIMINATE AGAINST PICI.

Bellow points to his decrease in income as evidence of his loss of "the enjoyment of all benefits" of his contract with PICI and, therefore, of Amoco's alleged contractual interference. As the Fifth Circuit recognized, this argument "in essence, is that Amoco interfered with his right to contract with PICI by interfering with PICI's contracts or ability to contract with PICI." Petition, p. 19a. What Bellow fails to recognize and accept is that the jury found that Amoco did not interfere with PICI's contracts, or its ability to contract with Amoco, on the basis of race. That jury finding, which Bellow and PICI never challenged, renders Bellow's argument meaningless. Losing income because your company lawfully has lost business is not something which warrants Supreme Court review.

CONCLUSION

Respondent respectfully requests that this Court deny the petition for writ of certiorari in this matter.

Respectfully submitted,

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